

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 228 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NARANBHAI LIMJIBHAI PATEL

Versus

HEIRS OF PARSHOTTAM SAKHIDAS  
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Appearance:

MR DG CHAUHAN for Petitioners  
MR RN SHAH for Respondent No. 1  
Respondent No. 3 served  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. Present appellants filed a Civil Suit against one  
Parshottam Sakhidas - respondent No.1 herein and  
respondent No.3 Nagar Panchayat, Jhalod, being Regular

Civil Suit No.67 of 1980 in the Court of Civil Judge (JD) at Jhalod. Defendant No.1 Parshottam Sakhidas died during pendency of Civil Suit No. 67 of 1980, and his heirs have been brought on record and defendant No.1 thereafter was represented by his legal heirs and representatives, stating that their house and the houses of defendants, the present respondents are, situated in Talav Falia at Jhalod. There are two lanes of houses opposite to each other while there is a strip of land in shape of public street, in between two rows of houses. The present appellant filed the suit stating that original defendant Nos. 1 and 2 by making a construction in public road, adjacent to their house, were causing obstruction to public right of the residents of that area, and that the strip of land was vested with the defendant No.3 Nagar Panchayat. Therefore, it was contended that defendants No. 1 and 2 had encroached upon the public street so as to obstruct the right of the plaintiff and other residents to use that public road. Facts further goes to show that defendant Nos. 1 and 2 have constructed 'Khadancha', a type of construction to have access to the house of defendant Nos. 1 and 2. As it appears that the houses of defendants were 4 to 5 feet above the ground level and since that strip in between, was in slope from North to South, the rain water was flowing and that the construction, therefore, was made to have access to the house of defendants No. 1 and 2 and to have access to their cattle, and this 'Khadancha' construction was objected by the plaintiff through filing above suit for declaration that the 'Khadancha' is an illegal construction and permanent injunction restraining defendants from obstructing the rights of the plaintiff to have access through that public road. Defendants, the present respondents contested the suit stating that they were previously obstructed by Nagar Panchayat, Jhalod, and therefore a suit came to be filed, being suit No. 144 of 1977, against Nagar Panchayat, present defendant No.3 and in that suit, compromise was arrived at between the parties and the defendants were allowed to have the construction in question for the access to their houses.

2. However, learned Civil Judge (JD), Jhalod, decreed the suit of the present appellant and defendants were ordered to remove the construction, which was 3 feet 35 inches, which was accordingly to the trial judge, an encroachment and obstructing the public way. The present respondents filed a Civil Regular Appeal against the above said judgment and decree dated 30th October, 1982, passed by the learned Civil Judge (JD), Jhalod, in the court of District Judge at Panchmahals, which was registered as Regular Civil Appeal No. 119 of 1982.

Learned Assistant Judge, Panchamahals, vide his order dated 11th March, 1983, allowed the Appeal and dismissed the suit of the plaintiff, and hence, this Second Appeal is filed by the original plaintiff against the respondents i.e. original defendants.

3. Learned advocate for the parties were heard.

4. The following substantial question of law was framed by this Court while admitting the Appeal:

"That the learned Assistant Judge has committed a substantial error of law in interpreting the section 2 (24AA), 90, 94(2) and 98(1) 98(2), of Gujarat Panchayat Act, 1961. "

5. Going through the record of the Appeal and considering the circumstances of the case, the position emerges that the learned trial judge held that the compromise arrived at by the defendants and Nagar Panchayat in a previous Suit No.114 of 1977 was against the law because before entering into such compromise, necessary permission of competent authority was required to be obtained because allowing the defendants to have that "khadancha" construction, would amount to transfer or assign of panchayat property to private party. Further, learned trial judge observed that the land in question was vested in the Nagar Panchayat and the construction made by the defendants No. 1 and 2 was clearly an obstruction and the compromise arrived at by defendants No.1 and 2 with the Nagar Panchayat in earlier suit was illegal.

6. Learned Assistant Judge in Regular Civil Appeal No. 119 of 1982 observed that, firstly, there was dispute about the ownership of the land on which the construction was made, and the plaintiff could not lead cogent evidence that alleged encroached land was owned by the Panchayat. The learned Assistant Judge observed that in City Survey, the land which is constructed by defendants No. 1 and 2 has been held to be of the ownership of defendants No.1 and 2. Further, learned Assistant Judge after taking into consideration the local circumstances and admitted fact, observed that the defendants No. 1 and 2 were using the above said space since long and the possession of the long duration, warrants an inference of title. Therefore, learned Assistant Judge rightly observed that the plaintiff could

not establish that the land which is alleged to be encroached upon belongs to Panchayat. Secondly, learned Assistant Judge also observed that case was falling within Sec. 94(2) of the Gujarat Panchayat Act and not under Section 98(2) of the Panchayat Act. Section 94(2) of the Panchayat Act empowers all Panchayats to continue the encroachment made by building or erection, etc. on such terms and conditions, which may be prescribed and in pursuance of this power, the Panchayat entered into a compromise with defendants No. 1 and 2 in the earlier suit. Therefore, it could not be said that the compromise which was entered into was transferring or assigning of the property of the panchayat to the third party. Therefore, the learned Assistant Judge came to the right conclusion and committed no error in law in interpreting Section 2 (24AA), Sections 90, 94(2) and 98(1) and 98(2) of the Gujarat Panchayat Act.

7. In this view of the matter, the learned Assistant Judge rightly held that the compromise entered into by defendants No. 1 and 2 and Nagar Panchayat, in Civil Suit No. 114 of 1997, by which the defendants No. 1 and 2 were allowed to keep the construction, was perfectly legal in view of Section 94(2) of the Panchayat Act. Learned Assistant Judge also rightly came to the conclusion that on facts and evidence of the case, it was crystal clear that defendants No. 1 and 2 were holding the land in question for long duration and this possession warranted an inference of title coupled with the fact that the plaintiff could not establish by cogent evidence that the subject matter of the suit land was a public street.

8. In this Appeal, nothing could be shown to disturb the findings of the learned Assistant Judge on the above said substantial question of law, and hence, there is no substance in this Appeal and the same requires to be rejected.

9. In the result, the Appeal is dismissed with no order as to costs.

(J.R. Vora, J.)

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